IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL & CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5672 OF 2004

Shri Abdul Aziz Khudabux Pathan
age 54 years, Occupation : Service
Residing at All India Glass Works
Compound, 326, M.V.Road,
Bail Bazar, Kurla, Bombay-400 072.
(Since Deceased)

1] Abdul Rehman alias Munna
S/o.Abdul Aziz
Aged 52 years, Occ.:Service

2] Fazlur Rehman S/o.Abdul Aziz
age 48 years, Occ.:Service

3] Abdul Qayum S/o.Abdul Aziz
age 42 years, Occ.Service

the heirs and legal representatives
of the deceased Original Plaintiff
Abdul Aziz Khudabux Pathan.
And all are residing at
All India Glass Works Compond,
326, M.V.Road, Bail Bazar,
Kurla, Bombay - 400 072. ...Petitioners
(Ori.Plaintiffs)

Versus

1] The All India Glass Works Pvt.Ltd.
a Company registered under the
provisions of Companies Act,
having its registered office at 111,
Bhandari Street, Mumbai - 400 003.

2] M/s.Shakir Handling Agency
a partnership firm, having
registered office at 111,
Bhandari Street, Mumbai-400 003. ...Respondents
(Orgi.Defendants)

.....

Mr.Vipin Kamdi with Ms.Bhandari i/b Ms.J.P.Thakkar for Petitioners.

Mr.Rajiv Patil with Mr.Sachin S.Punde for
Respondent No.1.

ALONG WITH

CRIMINAL REVISION APPLICATION NO.167 OF 2004

1.Abdul Rehman @ Munna,
Aged about 43 years, Occ.: Service,

2.Abdul Kayum @ Pattu,
Aged 38 years, Occ.: Service

Both residing at/in the Compound of
All India Glass Works Pvt.Ltd.,
326, Mathuradas Vasanji Marg,
Bail Bazar, Andheri-Kurla Road,
Mumbai - 400 072. ...Applicants

Versus

1.All India Glass Works Pvt.Ltd.,
Having its Registered Office at
326, Mathuradas Vasanji Marg,
Bail Bazar, Andheri-Kurla Road,
Mumbai - 400 072.

2.The State of Maharashtra ...Respondents

.....

Mr.Rajendra Sorankar for Applicants.

Mr.Rajiv Patil with Mr.Subodh Desai for
Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2/State.

.....

CORAM: A.M.KHANWILKAR, J.

JUNE 6, 2005.

JUDGMENT :

1. This common Judgment will dispose of both

the above numbered Writ Petition as well as Revision Application between the parties in relation to premises being tenement on the ground floor at All India Glass Works Compound, 326, M.V.Road, Bail Bazar, Kurla, Bombay - 400 072.

2. The Petitioners claim to be the successors of Shri Abdul Aziz Khudabux Pathan. The predecessor of the Petitioners had filed suit in the Court of Small Causes at Bombay being R.A.D. Suit No.3739 of 1990 against the Respondents asserting therein that he was in lawful occupation, enjoyment and possession of the suit premises from much prior to 21st May 1959 and continued to remain in occupation, enjoyment and possession thereof till the institution of the said suit by him. It was his case that the suit premises were sublet to him by Defendant No.1/Respondent No.1 (All India Glass Works Pvt.Ltd.) initially at monthly rent of Rs.15/-, which was later on increased and, at the relevant time, when the suit was instituted, he paid Rs.45/- per month towards rent. In the Plaint as filed, it is categorically stated that the amount towards rent in respect of the suit premises

was deducted by the Respondent No.1/Defendant No.1 directly from his salary, which included all permitted increases, electricity and water charges. In short, the case of the predecessor of the Petitioners was that he was occupying the suit premises as tenant thereof and no separate rent receipt was issued as the amount towards rent was deducted directly from his salary by the Respondent No.1/Defendant No.1, who is the owner of the suit property. It was the case of the predecessor of the Petitioners that he was in employment of Defendant No.1/Respondent No.1. On the above assertions, declaration was sought by the predecessor of the Petitioners that he was the lawful subtenant in the suit premises and consequential relief of injunction was also sought against the Respondents not to disturb his occupation, possession and enjoyment of the suit premises without due process of law.

3. On the other hand, the Respondent No.1 filed Ejectment Application No.35 of 2000 before the competent Authority which, however, was rejected on the finding that the Company did not

produce Leave and License Agreement executed between the parties in respect of the suit premises. Be that as it may, the Respondent No.1 had also taken out proceedings under Section 630 of the Companies Act before the Metropolitan Magistrate, 22nd Court, Andheri, Mumbai being case No.30/S/91. The said proceeding was initiated in March 1991 asserting that the predecessor of the Petitioners was wrongfully withholding the suit premises even after he had ceased to be in the employment of the Respondent No.1 with effect from 30th November 1990, in that, failed and neglected to vacate the same and hand over vacant and peaceful possession thereof to the Respondent No.1 Company inspite of legal notice given in that behalf. The said complaint was filed by one Mohammed Rajabali Ibrahim, the Chairman and the Managing Director of the complainant/Respondent No.1. It is asserted that the company premises have been purchased by the Respondent No.1 Company, which was initially of All India Glass Works, a partnership firm as a running and going concern in 1951. At the relevant time, the employees employed by the said partnership firm including the

predecessor of the Petitioners Abdul Aziz Khudabux Pathan were absorbed in the employment of the complainant/Respondent No.1 Company along with other workers who were so continued, and as such, the predecessor of the Petitioners continued to work with the Respondent No.1 Company. It is the case of the Respondent No.1 Company that the predecessor of the Petitioners was provided accommodation in workers' quarters on gratuitous basis. It is further asserted by the Respondent No.1 Company that in June 1972, the complainant Company was required to be closed down and workers were retrenched including the predecessor of the Petitioners with the permission of the Labour Commissioner. It is also the case of the Respondent No.1 Company that the premises which were occupied by the erstwhile workers of the Company were got vacated and thereafter demolished. It is the case of the Respondent No.1 Company that insofar as the predecessor of the Petitioners is concerned, he was re-employed by the Respondent No.1 Company in July 1972, as their Estate Manager to look after and manage the properties of the Company premises at Kurla. In about 1974, the

Respondent No.1 Company permitted the predecessor of the Petitioners to occupy and reside in a portion of the Company's shed on gratuitous basis bearing Municipal Assessment Ward No.L-3402(9), 326-H in the Company premises as described in the Plan appended to the complaint along with stated furnitures, fixtures and other articles. The specific case of the Respondent No.1 Company is that the predecessor of the Petitioners was re-employed in July 1972 on terms and conditions stated in the appointment letter dated 15th July 1972, so issued, which provided for free quarters to be given in the compound of the Respondent No.1 Company, free from rent and all charges to be vacated within 48 hours, as and when demanded by the Respondent No.1 Company. During the pendency of the aforesaid proceedings, the predecessor of the Petitioners expired. As a consequence, the Petitioners were brought on record as heirs and legal representatives of Abdul Aziz Khudabux Pathan in both the proceedings.

4. The abovesaid suit was continued by the Petitioners as heirs and legal representatives of

the Plaintiff. Evidence was adduced by both sides in support of their respective claim in the said suit. The Small Causes Court at Bombay, by Judgment and Order dated February 10, 2000 was pleased to dismiss the said Suit being R.A.D. Suit No.3739 of 1990. On the evidence as adduced, the Trial Judge has found that the Plaintiffs failed to establish that they were lawful tenants in respect of the suit premises. On the other hand, it has found, the evidence would indicate that the predecessor of the Petitioners came in possession of the suit premises as the employee of the Respondent No.1 Company, being free quarters provided to him as condition of service. In substance, the Trial Court has taken the view that as the Plaintiffs failed to establish the relationship of the landlord and tenant; and instead, it is found that the original Plaintiff was a gratuitous licensee. As a consequence, the Court had no jurisdiction to try and decide the suit as filed, as the Plaintiff was not protected by the provisions of Rent Act. The decision of the Small Causes Court was taken in appeal by the Petitioners by way of Appeal No.233 of 2000. Even

the said appeal has been dismissed by the Appellate Court by oral Judgment dated February 12, 2004 upholding the findings reached by the Trial Court on re-appreciating the evidence on record. Against this decision, Petitioners have filed Writ Petition No.5672 of 2004.

5. Insofar as the action initiated by the Respondent No.1 Company under Section 630 of the Companies Act, the same culminated with Judgment and Order passed by the concerned Metropolitan Magistrate on September 30, 2003. The Magistrate following the findings of the Civil Court, ruled against the Petitioners. Even the objection regarding maintainability of the complaint about the absence of authorisation has been considered and negatived by the concerned Magistrate. The Magistrate consistent with the findings recorded by it, convicted the Petitioners for offence punishable under Section 630 of the Companies Act and sentenced to pay fine of Rs.1,000/- (Rupees One Thousand) each, in default, to suffer simple imprisonment for three months. The Petitioners were further directed to vacate the Company’s flat

within one month after the appeal period was over. This decision of the Magistrate was taken in appeal by the Petitioners being Criminal Appeal No.243 of 2003 before the Court of Sessions for Greater Bombay. Even the said Appeal has been dismissed by the Appellate Court by Judgment and Order dated March 23, 2004. Against this decision, Petitioners have preferred present Criminal Revision Application No.167 of 2004.

6. Although, the two proceedings are independent, but, pertain to same parties in respect of the subject premises of the Respondent No.1 Company, both the Writ Petition as well as Revision Application have been heard together and I think it appropriate to dispose of the same by this common Judgment.

7. I shall first deal with the issues raised in the Writ Petition questioning the correctness of the concurrent view taken by the two Courts below in dismissing the suit preferred by the Plaintiff for declaration that he was lawful subtenant in the suit premises. According to the Petitioners, the

Court has committed manifest error in not deciding the matter on merits, but non-suiting the Plaintiffs on the reasoning that the Court had no jurisdiction. It was argued that the finding reached by the Courts below that the original Plaintiff was the gratuitous licensee in the suit premises cannot be sustained as that case was not even pleaded by the Respondent No.1 Company in the written statement as filed. It was contended that the Respondent No.1 Company, in fact, has taken inconsistent pleas with regard to the status of the Plaintiff. In the ejectment application as was filed by the Respondent No.1 Company, the same proceeded on the assertion that the Plaintiff was occupying the suit premises as its licensee. Whereas, in the proceedings under Section 630 of the Companies Act instituted by the Respondent No.1 Company, it is asserted that the Plaintiff was put in possession of the suit premises and was occupying the same as service quarters. However, in the suit filed by the Plaintiff, the stand of the Respondent No.1 was that the Plaintiff was occupying the premises as gratuitous licensee. If the former stand was to be accepted that the

Plaintiff was licensee, then action under Section 630 of the Companies Act was unavailable to the Respondent No.1 Company. It was also vehemently argued that the Courts below have committed manifest error in finding that the Plaintiff failed to establish that he was occupying the suit premises on monthly rent basis. It was contended that the Courts below have misappreciated the documentary and oral evidence on record to hold that the Plaintiff was occupying the Suit premises as gratuitous licensee, so as to conclude that it had no jurisdiction to entertain the Suit. It was contended that to record that finding, the Court has relied on the document (Exhibit 2A) which was inadmissible. The Court has wrongly assumed that the said document is proved in evidence. This is the substance of the argument, which was canvassed before me across the bar. The Respondents, on the other hand, adopted the reasons recorded by the two Courts below as their submission to contend that no interference is warranted in exercise of writ jurisdiction in the fact situation of the present case.

8. Having considered the rival submissions and going through the records with the assistance of the Counsel appearing for the parties, I have no hesitation in taking the view that no interference is warranted in exercise of writ jurisdiction in the fact situation of the present case. This is so because it is the suit filed by the Plaintiff for declaration that he was lawful sub-tenant in respect of the suit premises. In support of that claim, he has not produced any documentary evidence, but has only relied on the oral evidence of himself and P.W.2 Mr.Shaikh. The evidence as adduced by the Plaintiff has been considered by two Courts below. The same has been discarded for the reasons recorded by the Trial Court in Paragraphs 7 and 8 of its decision, which view is a possible view. The evidence of P.W.1 has been discarded inter alia, as he had no personal knowledge. Insofar as P.W. No.2 Mr.Shaikh is concerned, he was in service of Defendant No.1/Respondent No.1 Company, initially as clerk and later on as Labour Officer. He claims that he has personal knowledge about the record of the Defendant No.1 Company which may indicate that amount towards rent was

deducted from the salary of the Plaintiff. His evidence has been discarded by the Courts below on the reasoning that his claim is not supported by any documentary evidence. Besides, it has been found that this witness had personal grudge against the Company in respect of non-payment of his gratuity dues by the Respondent No.1 Company. In other words, the fact that the Plaintiff was occupying the suit premises on payment of rent, muchless as subtenant, has not been established by the Plaintiff. Finding so recorded by the Courts below, which is concurrent view taken by both the Courts, is unexceptional one. The Courts below have also analysed the documentary as well as oral evidence adduced by the Defendant No.1 Company, as can be discerned from the discussion in Paras 9 to 12 of the Trial Court’s decision. The Courts below have appreciated the said evidence and then recorded finding of fact that the Plaintiff was re-employed by the Defendant No.1 Company in the year 1972 and was provided suit premises as quarters in the compound of the property of the Defendant No.1 Company, free from rent and all charges. In other words, the Plaintiff was

occupying the suit premises on gratuitous basis while in employment of the Defendant No.1 Company. The fact that no charges were recovered from the Plaintiff or deducted from the salary of the Plaintiff, is not only deposed to by the Defendants' witnesses but also supported by the documentary evidence which was produced before the Court as is referred to, by the Trial Court from paragraphs 9 to 12. Finding of fact so reached by the Trial Court has been affirmed by the Appellate Court. In this view of the matter, no interference is warranted in exercise of writ jurisdiction.

9. To get over this position, Counsel for the Petitioners would contend that the fact that the Plaintiff was occupying the suit premises on gratuitous basis was not even the case of the Defendant in the written statement as filed. This submission is completely ill-advised. In paragraph 5 of the written statement, it is clearly averred on behalf of the Defendant No.1 Company that the suit premises was given by the Defendant No.1 to the Plaintiff on gratuitous basis without charges, as he was employee of the Defendant No.1, with a

view to facilitate him to do his duty as an Estate Manager of the Defendant No.1.

10. It was then contended on behalf of the Petitioners that the Defendant No.1 Company had taken inconsistent stand with regard to the status of the Plaintiff in the suit premises. It was argued that in the ejectment application filed by the Defendant No.1 Company, it was averred that the Plaintiff was occupying the premises as licensee. That Application was, however, rejected by the competent Authority on the finding that the Leave and License Agreement was not produced by the Company. Whereas, in the proceedings under Section 630 of the Companies Act taken out by the Defendant No.1 Company, it is asserted that the Plaintiff was wrongfully withholding the suit premises even after having ceased to be in the employment of the Respondent No.1 Company. Indeed, the fact asserted in the ejectment application is that the Plaintiff was occupying the suit premises as licensee, that, however, does not mean that the case of the Respondent No.1 Company was that the Plaintiff was occupying the suit premises in some other capacity,

namely, other than being its employee. It is nobody's case that in those proceedings, it is found that the Plaintiff was occupying the premises as "Licensee" as such on payment basis. On the other hand, the stand of the Respondent Company is that the Plaintiff occupied the premises as quarters while in employment, free from rent. The stand taken by the Respondent No.1 Company that the Plaintiff was occupying the premises on gratuitous basis does not militate against the Respondent No.1 Company in the proceedings taken out under Section 630 of the Companies Act. In that sense, for deciding the point in issue in the Suit as filed by the Plaintiff for declaration that he is lawful subtenant, the stand taken by the Respondent no.1 Company in different proceedings, will make no difference to the point in issue to be decided in the Suit as filed by the Plaintiff. That issue will have to be answered against the Plaintiff for want of cogent evidence to support his claim. On the other hand, the evidence adduced on behalf of the Defendant No.1 Company clearly establishes the fact that no charges were either recovered from the Plaintiff or deducted from his salary in respect of

the suit premises, which were occupied by the Plaintiff as staff quarters while in employment of the Company. The evidence, therefore, clearly establishes, as has been concurrently found by the two courts below and which finding of fact binds this Court is, that the Plaintiff was occupying the suit premises on gratuitous basis, while in service. If it is so, the Suit as filed by the Plaintiff ought to fail.

11. Attempt was made on behalf of the Petitioners to persuade this Court to take the view that the Courts below have misappreciated the evidence on record. However, I see no substance in this grievance. The basis on which the Courts below have concurrently found against the Plaintiff can neither be said to be manifest error or a perverse view. On the other hand, the finding so reached is founded on material on record and which is a possible view. Counsel for the Petitioners, however, argued that the Courts below have relied on the documentary evidence Exhibit 2A which was inadmissible. This argument clearly overlooks the fact that the document Exhibit 2A is an appointment

letter, copy whereof was produced during the evidence of Defendant to show that the original copy thereof was duly served on the Plaintiff, as he has acknowledged the same. The argument that the original appointment letter has not been produced, clearly overlooks that the copy of the original appointment letter will be in the custody of the Plaintiff and not the Defendant. The Defendant was only expected to produce the acknowledgement of having delivered the said appointment letter to the Plaintiff, which fact has been established from the evidence of the Defendant. On this reasoning, the argument that it was not open to the Court below to treat the document Exhibit 2A as proved, as original thereof was not produced, is, to say the least, ill-advised.

12. In other words, this Court has no hesitation in upholding the finding reached by two Courts below that the Plaintiff has failed to establish that he was lawful subtenant in the suit premises; whereas, the evidence on record amply proves that the Plaintiff was occupying the suit

premises on gratuitous basis, while in employment of the Respondent No.1 Company, as its Estate Manager. With this finding, it necessarily follows that the Small Causes Court had no jurisdiction to try and decide the suit as filed. In any case, the finding so reached by the Civil Court that the Plaintiff was occupying the suit premises on gratuitous basis, will bind the parties and would be relevant to decide the proceedings taken out by the Company under Section 630 of the Companies Act. Accordingly, the Writ Petition ought to fail and the same deserves to be dismissed.

13. That takes me to the questions raised in the Criminal Revision Application filed by the Petitioners challenging the order of conviction and sentence imposed by the Magistrate on the finding that the Petitioners were wrongfully withholding the suit premises of the Respondent No.1 Company. The first contention raised on behalf of the Petitioners is that the complaint as has been filed deserved to be rejected because of material irregularity, as there is no averment in the complaint that Shri Mohammed Rajabali Ibrahim, the

Chairman and Managing Director of the Complainant Company was authorised to file the said complaint under Section 630 of the Companies Act. Besides, the valid authorisation has not been proved even during the trial. It is then argued that Section 630 of the Companies Act was not available in the fact situation of the present case. According to the Petitioners, the status of the Petitioners has been described as licensee in respect of the suit premises and if it is so, Section 630 of the Companies Act cannot be invoked, which is available only against the employee, present or former or persons claiming through them put in possession of the premises of the Company. It was then argued that the fact that the Respondent No.1 Company has purchased the property from the erstwhile partnership firm has not been proved. Besides, the predecessor of the Petitioners was in the employment of the partnership firm and the Complainant instead, is a Private Limited Company. It was argued that the fact that the predecessor of the Petitioners was re-employed in July 1972 with the Respondent No.1 Company has not been proved. It was further argued that the Magistrate has

essentially decided the issue against the Petitioners mainly relying on the decision of the Small Causes Court clearly overlooking the fact that the said decision was pending in appeal. On the above arguments, it was contended that the proceedings under Section 630 of the Companies Act instituted against the Petitioners ought to fail.

14. On the other hand, Counsel for the Respondent No.1 Company has supported the conclusion reached by the two Courts below and contended that none of the arguments canvassed before this Court are of any substance.

15. Having considered the rival submissions, I shall deal with the first contention raised on behalf of the Petitioners that there is no assertion in the complaint that Shri Mohd.Rajabali Ibrahim, the Chairman and Managing Director of the complainant was authorised to file the complaint. Indeed, the complaint as filed, makes no reference to the fact that said Shri Mohd.Rajabali Ibrahim, the Chairman and Managing Director, was authorised to file the said complaint for and on behalf of the

Company. This contention was raised before the lower Court. The Trial Court in Para 6 of the Judgment while referring to the decision of our High Court in case of **M/s.Credential Finance Ltd. vs. State of Maharashtra & Ors. reported in 1999 All.M.R. (Cri.) 280** has found that said Shri Mohd.Rajabali Ibrahim being the Chairman and Managing Director of the Company was competent to institute the complaint for and on behalf of the Company. It then observed that there is nothing on record to show that he was not authorised by the Complainant at any point of time. It has found that the authorisation has been proved during the trial. The Appellate Court has considered this aspect in Paragraph 7 of the Judgment. It has, in the first place, affirmed the opinion of the Trial Court on this issue. It has then observed that since the person who filed the complaint was the Managing Director, was competent to institute the complaint for and on behalf of the Complainant. It has then observed that there is nothing on record to show that his authority was challenged, for which reason, the Court can proceed on the basis that there was corporate authorisation in favour of

the Managing Director.

16. In the reported Judgment of this Court referred to above, it was a complaint filed by the Manager of the Company for offence under Section 138 of the Negotiable Instruments Act. In Paragraph 11 of this decision, the Court has noted that a Manager or the Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs of the Company for its day-to-day management and within that activity would certainly be calling the act of approaching the Court either under Civil Law or Criminal Law for staying the trial on motion. It has then observed that it would be too technical and narrow, a view to take that in the body of the complaint, the authority is not elaborated upon and along with documents annexed to the complaint, the authorisation is not produced. It has then referred to the fact of that case that the status of the person, who had filed the complaint in the capacity of the Manager, was not in dispute, but what was insisted upon was only absence of authorisation on record. This Court has dealt with

that technical argument and negatived the same. In paragraph 15, the Court has observed that neither the Negotiable Instruments Act nor the Companies Act, 1956 imposes a precondition that there has to be an authorisation as per statutory provision. It has then observed that when an artificial person like a Company has to file a complaint, it will be operated through one of its officials which may include even a Chairman or Managing Director. The Court then went on to observe that in absence of authorisation being a precondition, in the event of dispute, it will become a subject matter of proof to be adduced at the time of trial. In Paragraph 18 of the same decision, this Court has adverted to the decision of the Gujarat High Court reported in **1998 Cri.L.J.700 in the case of Geekay Exim (India) Ltd. & Ors. vs. State of Gujarat & Anr.**, wherein, the complaint was signed by the Administrative Manager of the Company. The Gujarat High Court has held that no special and express authorisation is necessary for initiating proceedings by the Administrative Manager for and on behalf of the Company. This Court has adopted that view of the Gujarat High Court. In Paragraph

20 of the same decision, the Court has referred to another decision of our High Court reported in **1994 (4) Bom.C.R. 237 in the case of Bratindranath Banerjee, Director, Standard Chartered Bank vs. Hiten P.Dalal**, wherein, it has been held that the complaint which was admittedly filed by the Director as an Officer of the Bank not having been filed in his individual capacity, is to be understood as a complaint by the Bank.

17. It will be useful to refer to another decision of the Apex Court in the case of **Atul Mathur vs. Atul Kalra & Anr. reported in (1989) 4 SCC 514.** In that case, however, the argument was that the Power of Attorney relied upon, authorised the stated person to institute proceedings for and on behalf of the Company only in civil suit, sales-tax proceedings and excise matters and did not empower him to file criminal complaint on behalf of the Company. The Apex Court has dealt with that objection. In Paragraph 21 of the decision, the Apex Court has upheld the view taken by the High Court that the Divisional Sales Manager of the Company was certainly competent to file the

complaint on behalf of the Company as per instructions given to him from the Head Office of the Company. The Apex Court has then observed that the defect was not a material irregularity that could not have been cured. What is relevant for our purpose is the observation in Paragraph 21, which reads thus:

> "Incidentally, we may observe that in spite of contending that the complaint suffered from an irregularity, respondent 1 has neither pleaded nor proved that a failure of justice has been occasioned on account of the alleged irregularity."

. Even in the present case, it is neither pleaded nor proved that any failure of justice has occasioned on account of the alleged irregularity.

18. Be that as it may, in the first place, the question is: whether any authorisation in favour of Chairman-cum-Managing Director of the Company to file a complaint would be necessary in law. Counsel for the Petitioners is unable to invite my attention to any express provision in the Companies Act, which obligates authorisation by the Company as a precondition to enable the Chairman and

Managing Director of the Company to institute action under Section 630 of the Companies Act. In other words, that is not the statutory requirement. The fact that the complaint has been filed by the Chairman and Managing Director of the Respondent No.1 Company, is not in dispute. The status of Mohd.Rajabali Ibrahim as the Chairman and Managing Director of the Respondent No.1 Company is also not in dispute. The only objection is about lack of authorisation. I am persuaded to adopt the opinion expressed by this Court in Para 11 of the decision in **M/s.Credential Finance Ltd. (supra)** that a Manager or the Managing Director ordinarily, by the very nomenclature, can be taken to be the person in-charge of the affairs of the Company for its day-to-day management and within that activity would certainly be calling the act of approaching the Court either under Civil Law or Criminal Law for setting the trial on motion. Similar view is taken by the Gujarat High Court in **Geekay Exim (India) Ltd. (supra)**, wherein, the complaint was signed by the Administrative Manager. In another decision of the High Court in **Bratindranath Banerjee (supra)** wherein, the complaint was filed

by the Director. In other words, non mentioning of authorisation by the Respondent No.1 Company in the complaint would not render the complaint untenable or incompetent. As mentioned earlier, insofar as complaint filed by the Chairman and Managing Director of the Company is concerned, no authorisation need be insisted upon, unless the status of the person who has filed the complaint is put in issue and as a consequence, there is challenge to his authority. In cases where the complaint is filed by the Chairman-cum-Managing Director for and on behalf of the Company as in the present case, the Court has to assume that there is corporate authorisation, as he is the highest Official of the Company. In the present case, the said Mohd.Rajabali Ibrahim has entered the witness box and has asserted that he was the Managing Director of the Company and that he has filed the complaint as Chairman and Managing Director of the Company. The fact that the witness was the Managing Director of the Complainant Company is not challenged. In the cross-examination, this witness, although has stated that he does not recollect as to who had authorised him to file the

complaint and denied the suggestion that he was not so authorised, however, at the end of the cross examination, Resolution indicating that he was authorised to file the complaint was also produced. The genuineness of the said Resolution has been challenged in the cross-examination. However, the Courts below have considered the evidence on record and on appreciating the evidence so produced, taken the view that the prosecution has proved authorisation in favour of said Mohd.Rajabali Ibrahim. That is a finding of fact arrived at on the basis of evidence as produced.

19. Viewed in this perspective, there is no substance in the grievance that the complaint ought to fail for want of valid authorisation. As observed by the Apex Court in the case of **Atul Mathur (supra)**, it is not a material irregularity, which is not curable under Section 465 of the Code of Criminal Procedure. In the present case, evidence has been adduced regarding authorisation and which has been accepted by two Courts below. Besides, even in the present case the Petitioners have neither pleaded nor proved that a failure of

justice has been occasioned on account of the alleged irregularity.

20. That takes me to the argument that Section 630 of the Companies Act was unavailable in the fact situation of the present case. The amplitude of Section 630 has been considered by the Apex Court in the recent decision in the case of **Lalita Jalan & Anr. vs. Bombay Gas Co.Ltd. & Ors. reported in (2003) 6 SCC 107**, which in turn, has considered all the earlier decisions of the same Court and other relevant authorities.

21. In the present case, however, the argument is that as the status of the predecessor of the Petitioners has been described as licensee, the rigours of Section 630 cannot be invoked. It was argued that Section 630 is available only in cases where the premises belonging to the Company were given to the employee as service quarters and the employee wrongfully withholds the same or knowingly applies it for purpose other than which is expressed or directed. This argument clearly overlooks the finding of fact recorded by the Civil

Court. The Civil Court has found as of fact on appreciating the evidence on record that the suit premises were given to the Plaintiff after re-employment by the Respondent No.1 Company in July 1972 as one of the service condition. The Civil Court has also found as of fact that the suit premises were occupied by the Plaintiff on gratuitous basis. The above finding of facts recorded by the Civil Court will bind the parties even in the proceedings under Section 630 of the Companies Act. The Apex Court in the case of **V.M.Shah vs. State of Maharashtra & Anr. reported in (1995) 5 SCC 767** has found that findings of the Civil Court get precedence over the findings recorded by the Magistrate, in particular, in summary trials for offences like Section 630. The Apex Court has further observed that mere pendency of the Appeal does not have the effect of suspending the operation of the decree of the Trial Court and neither the finding of the Civil Court nor the decree becomes inoperative. This decision also answers the grievance of the Petitioners that even while appeal preferred by the Petitioners against the decree passed by the Small Causes Court

was pending, the Magistrate proceeded to rely on the said finding of the Civil Court to answer the point in issue against the Petitioners. Be that as it may, once the finding of fact recorded by the Civil Court has become final, no fault can be found with the conclusion reached by the Magistrate and confirmed by the Sessions Court, which is subject matter of challenge in this Revision Application. In other words, I find no substance in the argument that Section 630 of the Companies Act could not have been invoked by the Respondent No.1 Company in the fact situation of the present case.

22. That takes me to the argument that the complainant company has failed to prove that the property has been purchased by it from the erstwhile partnership firm. This argument clearly overlooks the fact that the ownership of the suit premises, that of the Respondent No.1 Company was never in question. In fact, in the suit as filed by the Plaintiff, it has been clearly asserted by the Plaintiff in Para 1 that the Defendant No.1/Respondent No.1 herein are the owners of the suit property. If it is so, this argument is an

argument of desperation and will not take the matter any further.

23. It was then argued that the fact that the predecessor of the Petitioners was re-employed in the Respondent No.1 Company in July 1972 has not been proved. This argument clearly overlooks the settled legal position as is referred to earlier, expounded by the Apex Court in case of **V.M.Shah (supra)**. The Civil Court in the present case, has found, as of fact, on appreciating the evidence on record that the Respondent No.1 Company had reappointed the Plaintiff in July 1972. That finding has been reached on the basis of evidence adduced before the Civil Court. That finding of fact will bind the parties. As is observed, in the case of **V.M.Shah (Supra)** by the Apex Court that the finding of the Civil Court gets precedence over the findings recorded by the Trial Court, in summary trial for offences like Section 630. In other words, the fact that the predecessor of the Petitioners was re-employed by the Respondent No.1 Company, as recorded by the Civil Court will bind the parties even in the present proceedings.

24. Accordingly, in my view, the Magistrate was justified in recording order of conviction and sentence against the Petitioners relying on the findings recorded by the Civil Court between the parties and which ought to get precedence as observed by the Apex Court in **V.M.Shah (supra)**.

25. The Appellate Court has also re-appreciated the evidence on record and affirmed the view as taken by the Magistrate that it is established from the record that the Petitioners were wrongfully withholding the possession of the suit premises which belonged to the Respondent No.1 Company. On that finding, the appeal has been dismissed by the Appellate Court. No interference in exercise of revisional jurisdiction is warranted with the said approach.

26. It was vehemently argued that the Respondent No.1 Company had preferred ejectment application on the assertion that the predecessor of the Petitioners was occupying the suit premises as licensee, which, however, has been rejected by

the competent Authority on the finding that the company failed to establish that position. This aspect has already been considered in the earlier part of this Judgment and answered against the Petitioners. This Court is now required to consider the matter only in the context of claim under Section 630 of the Companies Act; as the Respondent No.1 company has established that plea as is required for the purpose of that provision, the complaint filed for and on behalf of the Company, therefore, will have to be taken to its logical end. It cannot be gainsaid that the proceedings under Section 630 of the Companies Act are not due process of law. As mentioned earlier, the requirements of Section 630 having been fulfilled, the Court will be obliged to take the complaint to its logical end. Accordingly, there is no substance even in the Revision Application.

27. Hence, Writ Petition as well as Revision Application are dismissed with costs.

28. At this stage, Counsel for the Petitioners prays that Petitioners be granted some time to

enable them to approach the Apex Court, if so advised. As the Petitioners are in possession of the disputed premises for quite sometime, in my opinion, six weeks protection can be extended to the Petitioners, on condition that the Petitioners to file usual undertaking in this Court on or before 10th June 2005. Ordered accordingly.

A.M.KHANWILKAR, J.